



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2013-0615; FRL-9963-41-Region 6]

Approval and Promulgation of Implementation Plans; New Mexico;

**Albuquerque/Bernalillo County; New Source Review (NSR) Preconstruction Permitting
Program**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving portions of revisions to the applicable New Source Review (NSR) State Implementation Plan (SIP) for the City of Albuquerque-Bernalillo County. The EPA is approving the following: the establishment of a new Minor NSR general construction permitting program; changes to the Minor NSR Public Participation requirements; and the addition of exemptions from Minor NSR permitting for inconsequential emission sources and activities. Additionally, the EPA is conditionally approving the provisions establishing accelerated review and technical permit revisions.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2013- 0615. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Aimee Wilson, 214-665-7596,
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SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our March 10, 2017 proposal (82 FR 13270). In that document, we proposed to approve the revisions to the City of Albuquerque – Bernalillo County Minor NSR permitting program submitted on July 26, 2013, as supplemented on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016, that update the regulations to be consistent with federal requirements for Minor NSR permitting, remove a provision that refers to obsolete ambient air standards that are unique to the Albuquerque/Bernalillo County Air Quality Control Board, and remove the reference to the State of New Mexico non-methane hydrocarbon standard in 20.11.44 NMAC. We also proposed to conditionally approve severable provisions submitted on July 26, 2013, as supplemented on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016, which establish, and pertain to, the accelerated permitting procedures, conflict of interest, and technical permit revisions.

II. Final Action

We are approving revisions to the City of Albuquerque – Bernalillo County Minor NSR permitting program submitted on July 26, 2013, as supplemented on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016. The revisions were adopted and submitted in accordance with the requirements of the CAA and the EPA’s regulations regarding SIP development at 40 CFR part 51. Additionally, we have determined that the submitted revisions to the City of Albuquerque – Bernalillo County Minor NSR program are consistent with the EPA’s regulations at 40 CFR 51.160 – 51.164 and the associated policy and guidance. Therefore, under section 110 of the Act, the EPA approves into the New Mexico SIP for the City of Albuquerque – Bernalillo County the following revisions adopted on July 10, 2013, and submitted to the EPA on July 26, 2013:

- Revisions to 20.11.41.1 NMAC, Issuing Agency;
- Revisions to 20.11.41.2 NMAC, Scope;
- Revisions to 20.11.41.3 NMAC, Statutory Authority;
- Revisions to 20.11.41.4 NMAC, Duration;
- Revisions to 20.11.41.5 NMAC, Effective Date;
- Revisions to 20.11.41.6 NMAC, Objective;
- Revisions to 20.11.41.7 NMAC, Definitions, with the exception of 20.11.41.7.J NMAC, 20.11.41.7.RR NMAC, and the reference to technical permit revisions in 20.11.41.7.EE NMAC, as discussed below;
- Revisions to 20.11.41.8 NMAC, Variances;
- Revisions to 20.11.41.9 NMAC, Savings Clause;
- Revisions to 20.11.41.10 NMAC, Severability;
- Revisions to 20.11.41.11 NMAC, Documents;

- Revisions to 20.11.41.12 NMAC, Fees for Permit Application;
- Revisions to 20.11.41.13 NMAC, Application for Permit;
- Revisions to 20.11.41.14 NMAC, Public Participation;
- Revisions to 20.11.41.15 NMAC, Public Information Hearing;
- Revisions to 20.11.41.16 NMAC, Permit Decision and Air Board Hearing on the Merits;
- Revisions to 20.11.41.17 NMAC, Basis for Permit Denial, with the exception of 20.11.41.17.F NMAC as discussed below;
- Revisions to 20.11.41.18 NMAC, Applicants' Additional Legal Responsibilities;
- Revisions to 20.11.41.19 NMAC, Permit Conditions;
- Revisions to 20.11.41.20 NMAC, Permit Cancellations, Suspension, or Revocation;
- Revisions to 20.11.41.21 NMAC, Permittee's Obligations to Inform the Department and Deliver an Annual Emissions Inventory;
- Revisions to 20.11.41.22 NMAC, Performance Testing;
- Revisions to 20.11.41.23 NMAC, Temporary Relocation of Portable Stationary Sources;
- Revisions to remove 20.11.41.24 NMAC, Emergency Permits;
- Revisions to 20.11.41.25 NMAC, Nonattainment Area Requirements;
- Revisions to 20.11.41.26 NMAC, Compliance Certification;
- Revisions to 20.11.41.27 NMAC, Enforcement;
- Revisions to 20.11.41.28 NMAC, Administrative and Technical Permit Revisions, with the exception of provisions pertaining to Technical Permit Revisions, as discussed below;
- Revisions to 20.11.41.29 NMAC, Permit Modification;
- Revisions to 20.11.41.30 NMAC, Permit Reopening, Revision and Reissuance; and

- Revisions to 20.11.41.31 NMAC, General Construction Permits.

Additionally, the EPA is finalizing the conditional approval of the severable provisions submitted on July 26, 2013, as supplemented on April 21, 2016; July 5, 2016; September 19, 2016; and December 20, 2016, pertaining to the accelerated permitting procedures, technical permit revisions, and the definition of conflict of interest. In a letter dated December 22, 2016, the City of Albuquerque has committed to addressing the concerns identified in our proposed conditional approval within one year from the date of the EPA's final conditional approval. Based on this commitment and the authority provided under section 110(k)(4) of the Act, we have determined it is appropriate to conditionally approve into the New Mexico SIP for the City of Albuquerque – Bernalillo County the following revisions adopted on July 10, 2013, and submitted to the EPA on July 26, 2013:

- The definition of “Conflict of Interest” at 20.11.41.7.J NMAC;
- The references to “technical permit revisions” in the definition for “Permit” at 20.11.41.7.EE NMAC;
- The definition of “Technical permit revision or technical revision” at 20.11.41.7.RR NMAC;
- Revisions to 20.11.41.17.F NMAC for conflict of interest;
- Revisions to 20.11.41.28 NMAC, pertaining to Technical Permit Revisions; and
- Revisions to 20.11.41.32 NMAC, Accelerated Review of Application.

The City of Albuquerque committed in a letter dated December 22, 2016, to adopt specific enforceable measures and to submit these provisions to the EPA for consideration as a SIP revision within one year from the date of the EPA's final conditional approval. If the EPA determines that the submitted revised enforceable measures are complete and approvable, the

EPA will take a separate action to propose approval of the revisions. If the State does not meet its commitment within the specified time period by 1) not adopting and submitting measures by the date it committed to, 2) not submitting anything, or 3) EPA finds the submittal incomplete, the approval will be converted to a disapproval. The Regional Administrator would send a letter to the State finding that it did not meet its commitment or that the submittal is incomplete and that the SIP submittal was therefore disapproved. The 18-month clock for sanctions and the two-year clock for a Federal Implementation Plan (FIP) would start as of the date of the letter. Subsequently, a notice to that effect would be published in the **Federal Register**, and appropriate language inserted in the Code of Federal Regulations (CFR).

III. Incorporation by Reference

In this rule, we are finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of the revisions to the New Mexico, Albuquerque/Bernalillo County regulations as described in the Final Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 15, 2017.

Samuel Coleman,
Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG – New Mexico

2. Amend §52.1620 by:

A. In paragraph (c), the second table “EPA Approved Albuquerque/Bernalillo County, NM Regulations” is amended by revising the entry for “Part 41 (20.11.41 NMAC) Authority to Construct”.

B In paragraph (e), the second table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” is amended by adding four entries at the end of the table.

The revision and additions read as follows:

§52.1620 Identification of plan.

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(c) * * *

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State Citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
* * * * *	* * *			

Part 41 (20.11.41 NMAC)	Authority to Construct	7/10/2013	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	The following are conditionally approved 20.11.41.7.J NMAC, references to “technical permit revisions” in 20.11.41.EE NMAC, 20.11.41.RR NMAC, 20.11.41.17.F NMAC, 20.11.41.28 NMAC, and 20.11.41.32 NMAC.
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(e) * * *

**EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE
NEW MEXICO SIP**

Name of SIP Provisions	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Explanation
* * * * *				
City of Albuquerque Clarification Letter on Minor NSR SIP	City of Albuquerque – Bernalillo County	4/21/2016	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

City of Albuquerque Clarification Letter Providing Public Notices of Minor NSR to EPA	City of Albuquerque – Bernalillo County	6/5/2016	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
City of Albuquerque Letter regarding Public Notice for Minor NSR	City of Albuquerque – Bernalillo County	9/19/2016	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	
City of Albuquerque Minor NSR Commitment Letter	City of Albuquerque – Bernalillo County	12/20/2016	[Insert date of publication in the Federal Register], [Insert Federal Register citation]	

[FR Doc. 2017-13449 Filed: 6/28/2017 8:45 am; Publication Date: 6/29/2017]